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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/911,926	08/15/97	FENDERSON J	8867-8C

HM42/0804

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EXAMINER	
CLARDY,S	
ART UNIT	**PAPER NUMBER**
1616	

DATE MAILED: 08/04/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/911,926	Applicant(s) Fenderson et al
	Examiner S. Mark Clardy	Group Art Unit 1616

☒ Responsive to communication(s) filed on *Aug 15, 1997* .

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *17-26* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *17-26* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☒ received in Application No. (Series Code/Serial Number) *08/236,732* .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). *3*

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Claims 17-26 are pending in this application which is a divisional of SN 08,467,367, now US Patent 5,721,191, which is a continuation-in-part of SN 08/153,946, abandoned, which is a continuation of SN 08/019,386, filed February 18, 1993, abandoned. Priority to the following applications has also been claimed: 08/152,066, 08/019,933, 08/236,732.[1]

Applicants' claims are drawn to a synergistic herbicidal composition comprising dimethenamid and a triketone or dione herbicide (claim 25) and herbicidal methods of use (claims 17-24); a triazine herbicide may also be included (claims 20, 26). The tri-/di-ketone herbicides may be sulcotrione (i.e., 2-(2-chloro-4-methanesulfonylbenzoyl)-1,3-cyclohexanedione), or the various 2-nitrobenzoyl bicyclooctane- or bicyclooxazine- diones discussed on page 4 of the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Seckinger et al (US 4,666,502), Stauffer (EP 0 230 596), Knudsen (US 4,869,748), and Sandoz (PCT WO 92/07837).

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[1]The following related applications are being examined simultaneously:

08/911,645	08/911,715	08/911725	08/911,911	08/911,926	08/912,087
08/912,124	08/912,134	08/912,444	08/912,449	08/914,349	08/914,799

Seckinger et al teach the herbicidal utility of dimethenamid (compound 55, col 15-16), and disclose the combination with additional biologically active agents including herbicides (col 8, lines 62-66).

Stauffer teaches sulcotrione in combination with additional herbicidal agents such as atrazine.

Knudsen and Sandoz teach applicants' herbicidal nitrobenzoyl bicyclooctanediones and oxazinediones, respectively.

One of ordinary skill in the art would be motivated to combine these references because they disclose known herbicides and because it is conventional in the art to combine herbicidal agents in a single composition.

It is noted that applicants herbicidal components are known, conventional herbicidal agents. Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined dimethenamid and the other herbicidal agents claimed herein because it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069. Absent evidence presenting unobvious results for the combinations claimed herein, applicants are seen to have done nothing more than combine known herbicidal agents in a conventional herbicidal composition.

In example 4, applicants present data for the combination of dimethenamid (D), sulcotrione (S), and atrazine (A), comparing: A, D+A, and S+A, with D+S+A. However, in order to determine

any synergistic effect, the first three compositions will need to be compared with D+S, S, and D, respectively, but that data has not been presented.

No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.

S. Mark Clardy
Primary Examiner
AU 1616

August 3, 1998